IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Sylvia Rowland,	:	
	:	C.A. No. 04-04-0190
Plaintiff,	:	
	:	
v.	:	
	:	
Playtex Products, Inc., a Delaware	:	
Corporation and Sedgwick	:	
Claims Management Services, Inc.,	:	
An Illinois Corporation,	:	
	:	
Defendants	:	

Upon Cross Motions for Summary Judgment

Submitted: May 24, 2006

Decided: May 26, 2006

Plaintiff's Motion for Summary Judgment is granted.
Defendants' Motion for Summary Judgment is denied.

Walt F. Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., Post Office Box 497, Dover, Delaware 19903-0497, Attorney for Plaintiff.

Keri Morris, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, Post Office Box 8888, Wilmington, Delaware 19899-8888, Attorney for Defendants.

Trader, J.

In this civil action on a claim for unpaid workers' compensation benefits and liquidated damages, I hold that the attempt by the employer to adjust medical expenses with Dr. Rowe's office was irrelevant to the Board's award of medical expenses. Accordingly, the plaintiff's motion for summary judgment is granted and the defendants' motion for summary judgment is denied.

The Facts

On August 29, 2000, the plaintiff, Sylvia Roland, sustained an industrial accident while an employee of Playtex Products, one of the defendants. On March 3, 2001, the plaintiff filed a petition to determine additional compensation due with the Industrial Accident Board (Board). At the hearing on January 28, 2002, the plaintiff presented evidence of her outstanding medical bills, including a bill to Dr. Rowe's office in the amount of $7,823.00. On February 7, 2002, the Board granted the plaintiff's petition for outstanding medical expenses including the fee of Dr. Rowe in the amount of $7,823.00.

Prior to the hearing before the Board, defendants' counsel wrote to Dr. Rowe's office on January 23, 2002 and offered to pay the "sum of $3,003.00 in full payment for the arthroscopy," conditioned upon "a final adjudication with regard to causation." By letter dated January 28, 2002, Dr. Rowe agreed to "accept the fee of $3,003.00" as payment for plaintiff's surgery. On March 9, 2002, the attorney for defendants mailed a check to Dr. Rowe for $3,003.00, and included a letter stating the payment was "in satisfaction of your surgical bill as agreed to in your letter dated January 28, 2002." On March 14, 2002, the attorney for the plaintiff sent a letter to the attorney for the defendants demanding "payment of all workers' compensation benefits due" the plaintiff.

The plaintiff filed this civil action against the defendants because of their failure to pay all workers' compensation benefits due within thirty days of the demand for

payment. The plaintiff and the defendants have filed cross motions for summary judgment.

Summary Judgment Standard

Summary judgment should be granted when no genuine issues of material fact exists and the moving party is entitled to judgment as a matter of law. *Wilson v. Joma*, 537 A.2d 187 (Del. 1988). In considering the motion, the Court should review the record in the light most favorable to the non-moving party. *Oliver B. Cannon & Sons v. Dorr-Oliver*, 312 A.2d 322 (Del. Super. 1973). The moving party has the burden of demonstrating that no material issue of fact exists. *Borish v. Graham*, 655 A.2d 831 (Del. Super. 1994).

Discussion

A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction. In *Huffman v. C.C. Oliphant & Son*, 432 A.2d 1207 (Del. 1981), the Delaware Supreme Court allowed amounts due under an Industrial Accident Board award to be collected pursuant to the Wage Payment and Collection Act. Furthermore, if an employer without any reasonable grounds for dispute fails to pay workers' compensation benefits after proper demand has been made, the plaintiff is entitled to liquidated damages under 19 Del.C. Sec. 1103(b).

The Delaware workers' compensation statute provides that the employer shall furnish reasonable medical services as and when needed. 19 Del. C. Sec. 2322(a). Pursuant to Sec. 2322(c), upon application to the Board by the injured employee, the Board may require the employer to furnish medical services to the employee.

In this case, the employee petitioned the Board and received an award entitling her to the reasonable cost of Dr. Rowe's treatment. The Board explicitly set this figure at $7,823.00.

A claimant must establish three elements to obtain an award for the payment of medical expenses: (1) the claimant incurred medical expenses; (2) such expenses are attributable to a work-related injury; and (3) the employer has not paid such expenses. *Guy J. Johnson Transportation Co. v. Dunkle*, 541 A.2d 551, 553 (Del. 1987). If the reasonableness of the expenses is contested, it is then the burden of the employer to produce evidence of unreasonableness. *Thomas Roofing Co. v. Whaley,* 1983 Del. Super. LEXIS 673 (Del. Super. Jan. 21, 1983). The hearing before the Board was the employer's opportunity to dispute the amount of the bill and argue that the charges were unreasonable. Since the employer failed to challenge the bill before the Board, he is estopped from asserting the unreasonableness of the medical services after the Board awarded the full amount of Dr. Rowe's bill.

Furthermore, the Board has specific statutory authority over the reasonableness of medical expenses in the workers' compensation context. The employer cannot usurp the Board's authority by an agreement with the medical provider which was not approved by the Board.

Both sides argue the applicability of *Porter v. Insignia Management Corp*., 2003 Del. Super. LEXIS 360 (Del. Super. Sept. 26, 2003). *Porter* involved an award of medical expenses by the Industrial Accident Board, despite the fact that a substantial portion of which were paid by Medicare. The employer argued on appeal that the payment of the full amount of medical expenses would result in a windfall to the claimant in light of Medicare's prior payment of a substantial part of these bills. The Superior

Court held that "[t]he issues of Medicare making the payments and Medicare as a secondary payor are entirely irrelevant to the decisions of the Board and the Court." *Id.* at **11 -12. The facts of the instant case are distinguishable from *Porter*. In *Porter*, payment was made to the claimant by a collateral source, whereas in the case at bar, payment was made to the medical provider by the employer. The inapplicability of *Porter* to the case before me does not help the defendants because the issue of an offset for payment to Dr. Rowe was never presented to the Board.

To the extent that the defendants assert a defense of accord and satisfaction, that defense is rejected by this Court. 19 Del. C. Sec. 2305 provides that "[n]o agreement, rule, or regulation, or other device shall in any manner operate to relieve any employer or employee in whole or in part from any liability created by [Chapter 23 of Title 19]." The statute extinguishes an accord and satisfaction defense unless there is an approval of the agreement by the Board. *Kelley v. ILC Dover and Liberty Mutual Insurance Co*., 787 A.2d 751 (Del. Super. 2001). The defendants have failed to show such approval and this defense is not available on this claim.

The defendants contend that an accord and satisfaction was entered into prior to the Board's decision and that the Board's approval was unnecessary. The defendants' contention is without merit. Any agreement between Dr. Rowe and the employer was conditioned on the fact that the Board made a finding that the medical expenses were caused by the accident. Therefore, an agreement between the employer and Dr. Rowe could not be consummated until after the decision by the Board. In any event, the defendants are in violation of 19 Del. C. Sec. 2305 because the purported agreement between the employer and Dr. Rowe was never presented for the approval of the Board.

In *Showell v. Mountaire Farms*, 2002 Del. Super. LEXIS 507 (Del. Super. Dec. 9, 2002), *aff'd* 836 A.2d 514 (Del. 2003), it was held that a right to offset workers' compensation benefits is an equitable remedy and that one seeking such an equitable remedy must have acted in good faith. In the case before me the employer attempted to obtain an agreement with Dr. Rowe as to the plaintiff's medical expenses by accusing Dr. Rowe of fraud. Since the employer did not act in good faith in this case, the defendants are not entitled to an offset on equitable grounds. Furthermore, the employer did not seek an agreement with the claimant regarding the outstanding charges from Dr. Rowe's office, and it is the claimant and the employer who were the parties before the Board.

The defendants next contend that the claim for liquidated damages would be improper because the defendants have reasonable grounds to dispute the amount due. I disagree. The good faith belief of an employer or insurer that an employee is no longer entitled to compensation is irrelevant under 19 Del. C. Sec. 2357. *Huffman, supra* at 1209. In this case, there are no reasonable grounds to dispute the amount due. The award of the Board was final and binding and the employer's failure to pay the amount due after proper demand results in the accrual of liquidated damages.

Finally, the defendant, Sedgwick Claims Management Services, Inc. is clearly liable to the plaintiff either as the workers' compensation carrier or as a third-party adjustment company.

Conclusion

In this case, the only payment on the Board's award of $7,823.00 was a payment of $3,003.00. Accordingly, there remains unpaid workers' compensation benefits in the amount of $4,820.00 due to the plaintiff, plus liquidated damages in the amount of $4,820.00.

Based on these findings of fact and conclusions of law, plaintiff's motion for summary judgment is granted and defendants' motion for summary judgment is denied. Judgment is therefore entered in behalf of the plaintiff, Sylvia Roland, and against defendants, Playtex Products, Inc. and Sedgwick Claims Management Services, Inc. for unpaid workers' compensation benefits in the amount of $4,820.00, liquidated damages in the amount of $4,820.00, plus pre-judgment interest at the legal rate from April 14, 2002, reasonable attorney's fees, and the costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge